IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Government Appeal No. (Defective) 2016 of 2001
(Old No. 2164 of 1999)

State of U.P. ……..Appellant

Vs.

1. Smt. Vimla Jethi
   W/o Mangat Ram
2. Surendra Kumar
   S/o Mangat Ram
   Both R/o 37, Dandipul
   P.S. Kotwali, District Dehradun.
3. Smt. Neeta, W/o Mangat Ram
4. Parvendra Kumar, S/o Mangat Ram
   Both R/o 8, Chakrauta Road
   P.S. Kotwali, District Dehradun.

…….Respondents

Shri T.S. Rautela, learned A.G.A. for the State.
Shri Pawan Mishra, Advocate on behalf of Shri R.P. Nautiyal, learned counsel for respondent No.2

Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

Oral: Hon'ble Prafulla C. Pant, J.

Heard learned A.G.A. for the appellant and Shri Pawan Mishra, Advocate on behalf of Shri R.P. Nautiyal, learned counsel for the respondent No.2.

2. Leave has been sought under Section 378 Cr.P.C. to maintain an appeal against acquittal passed in the judgment and order dated 12.04.1999, by learned Additional Sessions Judge (E.C. Act), Dehradun in S.T. No. 10 of 1995.

3. According to the prosecution, Smt. Bina Jethi, wife of Surendra Kumar Jethi, died of burn injuries on 23.06.1992. On the report, lodged by her brother Harish Sahni, a crime No. 529 of 1992 was registered against the accused/appellants Vimla Jethi, Surendra Kumar, Parvendra Kumar and Neeta. After investigation, charge sheet was submitted against them.

4. Impugned judgment and order, shows that there were three dying declarations made by the deceased. The first one was recorded by the Magistrate and she did not name anyone for receiving the burn injuries. When she was referred for treatment from Dehradun to Delhi, there also she made a dying declaration to the Delhi police and in that also deceased did not name any one and in both the dying declarations, she told that due to accidental fire at the time of preparing breakfast, she received injuries. However, in the third dying declaration, which was made to the police on 21.06.1992, i.e. four days after the incident, she named the respondents, who are her husband's relative that she was set on fire by them after pouring kerosene. There is no evidence on record regarding the kerosene being poured. P.W. 4 Jamuna Devi, P.W. 5 Kamla Devi and P.W. 6 Smt. Asha, who are negihbours have not supported the prosecution story. Even P.W. 9 Chaman Sahni, who is cousin of the deceased, has not supported the prosecution story.

D.W. 1 Pankaj Jethi is son of the deceased, who has stated that on 17.06.1992, at about 9:00-9:30 A.M. when his mother was preparing breakfast, she got burn injuries after her CHUNNI caught fire from a gas stove. In view of the above the prosecution evidence that the respondents set the deceased on fire was found not proved and they were acquitted by trial court.

5. In the above circumstances, we do not see any reason to grant leave to appeal in this case. Accordingly the leave is refused. Appeal stands dismissed.

(Dharam Veer, J.) **(Prafulla C. Pant, J.)**

Dt: 02.03.2007
Sweta